

Exhibit 4

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

ALVIN GALUTEN, on behalf of)
the Estate of HORTENSE)
GALUTEN,)
Plaintiff,)
vs.) No. 3:18-CV-00519
WILLIAMSON COUNTY HOSPITAL) Judge Eli Richardson
DISTRICT, d/b/a WILLIAMSON)
MEDICAL CENTER; and FIRST) Magistrate Judge Holmes
CALL AMBULANCE SERVICE, LLC,)
Defendants.)

30(b) (6) DEPOSITION OF
LEVI BENSON, M.D.
Taken on Behalf of the Plaintiff
July 31, 2019
Commencing at 9:02 a.m.

Reported by: Ann E. Ramage, RPR, LCR
Tennessee LCR No. 372
Expires: 6/30/2020

Page 2

Page 3

1 APPEARANCES:
 2 For the Plaintiff:
 3 G. FRANKLIN LEMOND, JR., ESQ.
 4 Webb, Klase & Lemond, LLC
 5 1900 The Exchange, S.E.
 6 Suite 480
 7 Atlanta, Georgia 30339
 8 (770) 444-4594
 9 Franklin@WebbLLC.com

10 For the Defendant Williamson County Hospital
 11 District, d/b/a Williamson Medical Center:
 12 BRYAN ESSARY
 13 Gideon, Cooper & Essary, PLC
 14 315 Deaderick Street
 15 Suite 1100
 16 Nashville, Tennessee 37238
 17 (615) 254-0400
 18 bryan@gideoncooper.com
 19 Also Present: Nanette Todd

INDEX	
INDEX OF EXAMINATIONS	
	Page
4 By Mr. Lemond	6
5 By Mr. Essary	125
6 By Mr. Lemond	139
INDEX OF EXHIBITS	
	Page
10 No. 1 Medical Staff Rules and Regulations	20
11 No. 2 Policy; Title: Signage	33
12 No. 3 Policy; Title: Medical Screening	44
Examination	
13 No. 4 Policy; Title: Stabilization	55
14 No. 5 Policy; Title: Transfer Policy	61
15 No. 6 Policy; Title: Provision of On-Call	69
Coverage	
16 No. 7 Policy; Title: Presentation on	70
Hospital Property and in Ambulances	
17 No. 8 Educational slides regarding EMTALA	77
18 No. 9 Nursing policy and procedure;	79
Subject: Discharge to Extended Care	
Facility	
21 No. 10 Healthcare liability insurance	101
policy	
22 No. 11 Umbrella liability policy	103
23 No. 12 Response to Plaintiff's First	104
Interrogatories to Defendant	
25 Williamson Medical Center	

Page 4

Page 5

INDEX OF EXHIBITS	
(Continued)	
	Page
4 No. 13 Response to Plaintiff's First	111
Request for Production to Defendant	
Williamson Medical Center	
6 No. 14 List of charges	112
7 No. 15 6/16/2016 Galuten/Todd letter;	114
6/30/2016 Galuten/Todd letters	
Bates Galuten_00213-0212	

1 The 30(b)(6) deposition of LEVI BENSON,
 2 M.D., was taken on behalf of the Plaintiff on July
 3 31, 2019, in the offices of Gideon, Cooper & Essary,
 4 PLC, 315 Deaderick Street, Suite 1100, Nashville,
 5 Tennessee, for all purposes under the Federal Rules
 6 of Civil Procedure.

7 The formalities as to notice, caption,
 8 certificate, et cetera, are waived. All objections,
 9 except as to the form of the questions, are reserved
 10 to the hearing.

11 It is agreed that Ann E. Ramage, being
 12 a Notary Public and Court Reporter for the State of
 13 Tennessee, may swear the witness, and that the
 14 reading and signing of the completed deposition by
 15 the witness are reserved.

* * *

(Pages 2 to 5)

Brentwood Court Reporting Services

Case 3:18-cv-00519 Document 97-4 Filed 01/17/20 Page 3 of 9 PageID #: 528

1 hypoxia for several days. Hypoxia in this case
 2 being defined as requiring supplemental oxygen. Her
 3 requirements for said supplemental oxygen had not
 4 changed.
 5 Q Okay. So was this a new condition for
 6 Mrs. Galuten on the morning of June 11, 2016?
 7 A It was not.
 8 Q Was she receiving supplemental oxygen on the
 9 morning of June 6th -- I'm sorry, June 11th, 2016?
 10 A She was.
 11 Q So did she -- how long had she received
 12 supplemental oxygen at Williamson Medical Center?
 13 A For at least several days.
 14 Q The entire time you were involved in her
 15 care?
 16 A The entire time I was involved in her care,
 17 yes.
 18 Q Was the plan to continue using supplemental
 19 oxygen even after she was transferred or discharged
 20 to Somerfield?
 21 A Yes. In fact, I wrote it on my transfer
 22 orders, the sheet that went to Somerfield.
 23 Q Did you feel medically that she needed to
 24 continue the supplemental oxygen?
 25 A I did.

1 those new or emergent medical conditions?
 2 A I would not.
 3 Q Did they require any immediate or emergent
 4 further evaluation or treatment?
 5 A They did not.
 6 Q Did you actually and personally evaluate and
 7 examine Ms. Galuten that morning?
 8 A I did.
 9 Q Can you tell us what you found during your
 10 physical examination of Ms. Galuten on the morning
 11 of June 11, 2016?
 12 A I could.
 13 Q Generally, tell us, or we can look at the
 14 note.
 15 A She was in no acute distress. I had her
 16 documented that she was confused. She had normal
 17 vital signs. She had saturating 100 percent oxygen
 18 on 2 liters of oxygen. Abdomen was soft,
 19 non-tender, non-distended.
 20 Q Was she restrained during your examination
 21 or evaluation?
 22 A No, she was not.
 23 Q Had she been in restraints earlier during
 24 the admission?
 25 A To the best of my knowledge, yes.

1 Q Otherwise, she could experience hypoxia?
 2 A Correct.
 3 Q Was that a new -- this need for supplemental
 4 oxygen, was that a new emergent medical condition
 5 that developed either June 10 or June 11, 2016?
 6 A It was not.
 7 Q What got us into that discussion,
 8 Dr. Benson, was the order for the chest x-ray. Was
 9 that x-ray performed?
 10 A The x-ray was performed around -- in the
 11 7:00 o'clock hour somewhere.
 12 Q Did you actually review the film itself?
 13 A To the best of my recollection, I believe I
 14 did.
 15 Q And from your memory or from the records or
 16 from both, what did the chest x-ray done on the
 17 morning of June 11, 2016, tell you or allow you to
 18 form an opinion of, please?
 19 A It showed that she had ongoing -- what was
 20 felt to be mild pulmonary edema and she had mild or
 21 small pleural effusions, which were overall,
 22 essentially, unchanged from prior films, multiple
 23 prior films.
 24 Q Those findings on the chest x-ray done on
 25 the morning of June 11, 2016, would you consider

1 Q Why?
 2 A I believe that she was in restraints
 3 temporarily because she was picking lines and tubes
 4 that were necessary to treat her at the time.
 5 Q It said she was mildly confused on the
 6 morning of your evaluation of June 11, 2016. Was
 7 that a new finding for Ms. Galuten?
 8 A It was not. During her stay, she had mental
 9 status ranging from pleasantly confused to agitated.
 10 Q Based on your education, training and
 11 experience, Dr. Benson, to a reasonable degree of
 12 medical certainty, did you feel she was medically
 13 stable to continue with the plan for transfer to
 14 Somerfield?
 15 MR. LEMOND: Object to form.
 16 BY MR. ESSARY:
 17 Q You can answer.
 18 A On the basis of the synthesis of the
 19 information I had that morning and knowing that the
 20 next level of care, what they could provide in terms
 21 of care, yes, I felt that she was appropriate to
 22 discharge that morning to transition to the next
 23 level of care.
 24 Q If you had had any concern that she was not
 25 medically stable or not an appropriate patient to

1 continue with the plan to transfer or discharge her
 2 to Somerfield, would you have stopped the discharge
 3 plan?

4 A I would have not initiated the discharge,
 5 yes. Yes. If there was something new that required
 6 ongoing hospitalization at an acute care hospital.

7 Q Were you, based on your education, training
 8 and experience, and to a reasonable degree of
 9 medical probability, were you confident that her
 10 condition would not deteriorate during the transfer
 11 from Williamson Medical Center to Somerfield?

12 MR. LEMOND: Object to the form.

13 THE WITNESS: I was confident that she
 14 would not deteriorate, given the information I had
 15 at the time.

16 BY MR. ESSARY:

17 Q As a matter of fact, did you give orders for
 18 follow-up labs several days after the transfer?

19 A I did. I gave orders for ongoing dietary
 20 maintenance, calorie counts, labs for, I believe, a
 21 BMP a few days after discharge.

22 Q To reflect your plan that she would be
 23 stable during transfer?

24 A Correct.

25 Q And stable on arrival?

1 A Correct.

2 Q And you hold those opinions to a reasonable
 3 degree of medical probability, sir?

4 A I do.

5 Q One other line of questioning. In the
 6 notice of deposition was the corporate structure of
 7 Williamson Medical Center. And I think you did
 8 explain this, but can you explain to the jury and to
 9 the court your understanding of how Williamson
 10 County Hospital District came into being, please.

11 A Williamson County Hospital District came
 12 into being as a private act in 1957 by the county,
 13 by Williamson County, initially, through formation
 14 of the Williamson County Hospital District. That is
 15 how the hospital is empowered to do its business, in
 16 my layman's terms.

17 Q So it's Williamson County Hospital District
 18 doing business as Williamson Medical Center?

19 A That's correct.

20 MR. ESSARY: Those are all the
 21 questions I have for you, sir. Thank you.

22 E X A M I N A T I O N

23 BY MR. LEMOND:

24 Q A couple of follow-ups based on the
 25 testimony you have provided in response to those

1 questions. So it's your testimony, Dr. Benson, that
 2 Ms. Galuten had been improving in the days leading
 3 up to her transfer; is that correct?

4 A That's correct.

5 Q Okay. So was she improving or was she the
 6 same, because I'm confused.

7 A Could you define a time period that you're
 8 speaking of?

9 Q Well, you said that she had been improving
 10 in the days leading up to her transfer, correct?

11 A I believe I said she was improved. She had
 12 been improving -- to clarify, she had been improving
 13 compared to how she was earlier in her stay.

14 Q Okay. So then at 1:37 in the morning, when
 15 Sharon Marshall makes a nursing note that the
 16 patient is having periods of nausea and small
 17 amounts of emesis, approximately 30 milliliters dark
 18 brown fluid, then that's inconsistent with the
 19 improvement that she had been experiencing in the
 20 days leading up to the 11th of June; is that a fair
 21 statement?

22 MR. ESSARY: Object to the form.

23 THE WITNESS: I would argue that's
 24 incorrect.

1 BY MR. LEMOND:

2 Q In what ways is that incorrect?

3 A She had had nausea throughout her -- nausea
 4 and vomiting through almost her entire stay, which
 5 was much larger volume earlier in her stay.
 6 Furthermore, she had been able to tolerate oral
 7 intake much more frequently than when she had had
 8 nausea and vomiting at the tail end of her stay,
 9 around the 10th and 11th. Meaning more often she
 10 was able to take down PO intake rather than having
 11 issues with nausea.

12 Q So she was more likely to be able to sustain
 13 oral food intake in leading up to the 10th and the
 14 11th than she had been?

15 A Correct.

16 Q But then yet beginning at 1:37 in the
 17 morning on the 11th, the day of her transfer, she
 18 begins to have a return to vomiting; is that what
 19 you're saying?

20 MR. ESSARY: Objection to form.

21 THE WITNESS: I wouldn't -- I wouldn't
 22 say that it was a return to vomiting. Again, she
 23 had had intermittent vomiting and nausea.

24 BY MR. LEMOND:

25 Q So at 3:42 in the morning when Nurse

(Pages 138 to 141)

1 Phillips prescribes Phenergan for continued nausea
 2 and vomiting after Zofran had already been given,
 3 that didn't cause any concern in your estimation?
 4 A It did not.
 5 Q Why is that?
 6 A Nausea and vomiting is an extremely common
 7 affliction that's treated all the time at home,
 8 anywhere, including with medications like Zofran and
 9 Phenergan.
 10 Q And this is for a patient that's supposedly
 11 improving?
 12 A Again, as compared to earlier in her stay,
 13 yes.
 14 Q So explain again why it is that you ordered
 15 the chest x-ray for hypoxia.
 16 A Dr. Galuten had requested a follow-up film,
 17 from what I understand, because he knew Ms. Galuten
 18 was being transferred and wanted to ensure that she
 19 remained stable for transfer. I felt it was not an
 20 unreasonable request.
 21 Q Do you recall speaking with Dr. Galuten the
 22 morning of his mother's transfer to Somerfield?
 23 A At the bedside? I believe -- I believe we
 24 had a conversation.
 25 Q Okay. Did Dr. Galuten ask you how his

1 mother had been while he had been away?
 2 A I don't recall specifics of the
 3 conversation, but that could have been asked.
 4 Q Okay. Did you inform Dr. Galuten of the
 5 fact that these new tests had been run on his mother
 6 while he was away?
 7 A Again, I don't recall the specifics of the
 8 conversation, but, in general, when I practice, I
 9 update the patient and/or the patient's family, as
 10 it may be fit, about the events of the prior 24
 11 hours and any pertinent new findings or lab or
 12 imaging results.
 13 Q Do you have any -- do you have any -- strike
 14 that.
 15 If Dr. Galuten were to testify that you did
 16 not tell him about the tests that were run between
 17 4:00 a.m. and 7:00 a.m. on the morning of June 11th,
 18 and that you just simply told him that everything
 19 was fine and that she was ready for transfer, do you
 20 have any reason to believe that Dr. Galuten's
 21 testimony in that regard would be inaccurate?
 22 A I can't speak to his accuracy, but, again,
 23 in general, I go over pertinent positives and
 24 negatives of results with every patient.
 25 Q But you don't have any specific recollection

1 of informing him of the tests that were run that
 2 night?
 3 A I do not have specific recollection of our
 4 exact conversation, no.
 5 Q Isn't it true that during, and as a result
 6 of discharge, Ms. Galuten's condition did worsen?
 7 MR. ESSARY: Object to the form.
 8 THE WITNESS: I think you're asking me
 9 two separate questions there or trying to elicit two
 10 different causes.
 11 BY MR. LEMOND:
 12 Q Did Mrs. Galuten's condition worsen during
 13 her transfer to Somerfield?
 14 A That's reflected in the records, that her
 15 condition worsened at Somerfield. I'm not aware of
 16 her condition worsening during transfer, no.
 17 Q Did the records not reflect that upon her
 18 arrival to Somerfield, that her hair, neck and gown
 19 were covered in emesis and coffee ground material?
 20 A I'm aware of the Somerfield records saying
 21 that she had some form of emesis on some part of her
 22 body.
 23 Q Upon arrival to the facility; is that
 24 correct?
 25 A Uh-huh.

1 Q And so does Williamson Medical Center make
 2 it a habit of transferring patients in such a
 3 condition?
 4 MR. ESSARY: Objection to form.
 5 THE WITNESS: I'm sorry?
 6 BY MR. LEMOND:
 7 Q Would Williamson Medical Center transfer a
 8 patient to another facility with vomit and emesis in
 9 the patient's hair, on their neck and face and on
 10 their gown?
 11 MR. ESSARY: Object to form. Lack of
 12 foundation.
 13 THE WITNESS: In general, Williamson
 14 Medical Center respects human decency, so that is
 15 not something I have ever seen done.
 16 BY MR. LEMOND:
 17 Q Okay. So it's fair to assume, then, that
 18 Ms. Galuten did not have vomitus and coffee ground
 19 emesis on her body at the time she was put in the
 20 ambulance to go to Somerfield?
 21 A Again, it's Williamson's practice to respect
 22 human decency.
 23 Q And not putting her in the ambulance in such
 24 a condition would be consistent with that policy,
 25 correct?

Page 146

1 A Correct.
 2 Q So if Ms. Galuten arrived at Somerfield in
 3 such a condition, as reflected by Somerfield's
 4 medical records, then that must have been something
 5 that transpired during transport, correct?
 6 MR. ESSARY: Objection to form.
 7 THE WITNESS: Per your logic, that
 8 would seem correct, but, again, per the records from
 9 First Call Ambulance that I have seen, there was no
 10 mention of that.
 11 BY MR. LEMOND:
 12 Q Have you conducted any type of investigation
 13 or inquiry as to the inconsistency between First
 14 Call's records and Somerfield's records in this
 15 matter?
 16 A Are you speaking to me as a person, or
 17 hospital representative?
 18 Q As a hospital professional.
 19 A Me personally, no, I have not.
 20 Q Do you know if Williamson Medical Center has
 21 conducted any such investigation?
 22 A I'm not aware, but that would be quality
 23 review.
 24 Q Why would that be quality review on the part
 25 of Williamson Medical Center if that was something

Page 148

1 aware of those records reflecting that. The
 2 records, in fact, reflect that she had light brown
 3 emesis that appeared to look like Ensure.
 4 Q I see the reference that you're -- you're
 5 quoting from the Ruben Rumen (phonetics) note from
 6 6/11/2016, 9:39 p.m.?
 7 A That's correct.
 8 Q I believe two entries above that, though,
 9 there's a brown emesis that is noted from
 10 Dr. Blakely at 7:50 p.m.?
 11 MR. ESSARY: It's not Dr. Blakely. I
 12 think it's a nurse.
 13 MR. LEMOND: A nurse. I thought I said
 14 nurse. My apologies.
 15 BY MR. LEMOND:
 16 Q Then you would agree that Ms. Galuten's
 17 condition deteriorated upon arrival at Somerfield?
 18 MR. ESSARY: Objection to form. The
 19 7:50 note, is that what you're referencing?
 20 MR. LEMOND: Yes.
 21 MR. ESSARY: Objection to form.
 22 THE WITNESS: I would say she
 23 deteriorated after arrival. At arrival, shortly
 24 after arrival, it was documented at 4:30 p.m.,
 25 again, by Nurse Blakely, that she ate 75 percent of

Page 147

1 that happened while she was in a First Call
 2 ambulance?
 3 MR. ESSARY: Any -- that would be
 4 quality review if a hospital undertook a review of
 5 the care involved in the case. We would potentially
 6 review care post discharge. If you're asking him as
 7 an individual if he looked at that, that's fine.
 8 BY MR. LEMOND:
 9 Q And isn't it true that upon arrival at
 10 Somerfield, Ms. Galuten's condition continued to
 11 deteriorate?
 12 MR. ESSARY: Object to the form.
 13 THE WITNESS: The records from
 14 Somerfield would reflect that she deteriorated while
 15 there.
 16 BY MR. LEMOND:
 17 Q Including continued bouts of vomiting,
 18 including bringing up of emesis and coffee
 19 ground-type material?
 20 MR. ESSARY: Object to the form. Lack
 21 of foundation.
 22 BY MR. LEMOND:
 23 Q Is that correct?
 24 A I am, again, not -- I would disagree with
 25 the coffee ground material at Somerfield. I'm not

Page 149

1 her meal and 50 percent of her Ensure. Documented
 2 normal vital signs at that time.
 3 MR. LEMOND: I have no further
 4 questions at this time.

5 MR. ESSARY: Read and sign.
 6 FURTHER DEPONENT SAITH NOT.
 7 (Proceedings concluded at 2:12 p.m.)

(Pages 146 to 149)

Brentwood Court Reporting Services

Case 3:18-cv-00519 Document 97-4 Filed 01/17/20 Page 7 of 9 PageID #: 532

1 REPORTER'S CERTIFICATE
2

3 I, Ann E. Ramage, RPR, Notary Public
4 and Court Reporter, do hereby certify that I
5 recorded to the best of my skill and ability by
6 machine shorthand all the proceedings in the
7 foregoing transcript, and that said transcript is a
8 true, accurate, and complete transcript to the best
9 of my ability.

10 I further certify that I am not an
11 attorney or counsel of any of the parties, nor a
12 relative or employee of any attorney or counsel
13 connected with the action, nor financially
14 interested in the action.

15 SIGNED this 6th day of August, 2019.

16
17
18
19
20 *Ann Ramage*



21 Ann E. Ramage, RPR, LCR

22 My commission expires: 10/05/2019

23 Tennessee LCR No. 372

24 Expires: 6/30/2020

1 ERRATA
2

3 I, LEVI BENSON, M.D., having read the foregoing
4 deposition, Pages 1 through 150, taken July 31st,
5 2019, do hereby certify said testimony is a true and
6 accurate transcript, with the following changes, if
7 any:

8 PAGE LINE SHOULD HAVE BEEN

9	_____	_____
10	_____	_____
11	_____	_____
12	_____	_____
13	_____	_____
14	_____	_____
15	_____	_____
16	_____	_____
17	_____	_____
18	_____	_____
19	_____	_____

20 LEVI BENSON, M.D.

21 Notary Public

22 My commission expires: _____

(Pages 150 to 151)

Brentwood Court Reporting Services

Case 3:18-cv-00519 Document 97-4 Filed 01/17/20 Page 8 of 9 PageID #: 533

